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OFFICE OF PETITIONS

In re Patent No. 6,766,070
Keith J. Williams et al.
Issue Date: July 20, 2004
Application No. 09/845,111
Filed: April 27, 2001
Atty Docket No. 80,245

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: LETTER REGARDING
: PATENT TERM ADJUSTMENT
: AND
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This letter is in response to the "PETITION FOR CORRECTION OF PAIR DATABASE AND FOR ENTRY OF CERTIFICATE OF CORRECTION TO CORRECT THE PATENT TERM CALCULATION UNDER 35 USC 154(B)," filed July 22, 2004, notifying the Office of an error in patentees favor, in the determination of patent term adjustment.

The petition is **GRANTED**.

The patent term adjustment indicated on the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of ZERO (0) days.

Patentees are given **Two (2) Months** to respond to this decision. No extensions of time will be granted under § 1.136(a).

On July 20, 2004, the above-identified application matured into U.S. Patent No. 6,766,070. The patent issued with a Patent Term Adjustment of 52 days. Patentee states that the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) of 52 days shown in the PAIR system was incorrect. On July 22, 2004, the instant petition was filed.

Patentee's arguments are well taken.

A review of the application history confirms that the patent term adjustment of 52 days indicated in the PAIR database and on the patent is in error. The application was entitled to a patent term adjustment of 145 days for Office delay in mailing a first notification under 35 U.S.C. 132 on November 19, 2002, fourteen months and 145 days after the filing date of the application, April 27, 2001.

A review of the application history also reveals that there are additional periods to be calculated in the reduction of the patent term adjustment. The PALM record only shows a reduction of 28 days for patentees' filing a response on March 19, 2003 to a non-Final Office Action mailed November 19, 2002 and a reduction of 65 days for the filing of drawings after the Notice of Allowance was mailed on March 4, 2004. Patentees assert that a submission was filed November 18, 2003, 3 months and 68 days after the mailing of the Final Office Action mailed May 20, 2003 and that the total number of days for applicant delay should be one hundred sixty-one (161) days.

Patentees are correct that an additional period of reduction should be entered due to their delay in responding to the final Office action mailed May 20, 2003. However, the period of reduction pursuant to § 1.704(b) is 90 days (not 68 days) the number of days in the period beginning on August 21, 2003 and ending on November 18, 2003.

In addition, a review of the record reveals that the reduction of 65 days for filing of drawings after the mailing of the notice of allowance is incorrect. 37 CFR § 1.704(c)(10) provides that:

Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:

(i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper;

or

(ii) Four months;

The drawings were filed on March 17, 2004, not May 17, 2004. Accordingly, pursuant to § 1.704(c)(10), the patent term adjustment should have been reduced by the number of days beginning on the date the other paper was filed, March 17, 2004, and ending on the date of issuance of the patent, July 20, 2004. As this period exceeds four months, the patent term adjustment should have been reduced by the lesser period of 120 days.

In view thereof, the correct determination of PTA is one hundred forty-five (145) days - twenty-eight (28) days - ninety (90) days - one hundred twenty (120) days for a total of ZERO days.

As this letter was submitted as an advisement to the Office of an error in Patentee's favor, the Office will not assess the \$200.00 application fee under 37 CFR 1.705(b). The petition fee in the amount of \$130.00 will be credited back to deposit account no.

50-0281. The Office thanks Patentees for their good faith and candor in bringing this to the attention of the Office.

The patent file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. See 35 U.S.C. § 254 and 37 CFR § 1.322. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by ZERO (0) days.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Patricia Faison-Ball at (571) 272-3212.



Karin Ferriter
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Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of DRAFT Certificate of Correction